

1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF FLORIDA
 3 MIAMI DIVISION
 4 CASE NO. 01-4319-CIV-KING/OSULLIVAN

5 *****
 6 SYLVIA ALLEN, as Personal)
 7 Representative of the Estate)
 8 of JAMES ROBERT ALLEN,)
 9 Plaintiff;)
 10 vs.)
 11 R.J. REYNOLDS TOBACCO)
 12 COMPANY, and PHILIP MORRIS)
 13 INCORPORATED,)
 14 Defendants.)
 15 *****

16 DEPOSITION OF WILLIAM WAYLAND, a
 17 witness called on behalf of the Defendants,
 18 pursuant to the Federal Rules of Civil
 19 Procedure, before Kristin Kelley, a
 20 Registered Professional Reporter and Notary
 21 Public in and for the Commonwealth of
 22 Massachusetts, at the offices of Goodwin
 23 Procter LLP, 53 State Street, 16th Floor,
 24 Boston, Massachusetts, on Wednesday,
 25 August 21, 2002, commencing at 2:40 p.m.

1 APPEARANCES:
 2
 3 LAW OFFICES GROSSMAN AND ROTH
 4 (by Andrew B. Yaffa, Esquire)
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 8 for the Plaintiff.
 9
 10 CLIFFORD E. DOUGLAS, ESQUIRE
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 12 Ann Arbor, Michigan 48105-3437
 13 for the Plaintiff.
 14
 15 LAW OFFICES SHOOK, HARDY & BACON LLP
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 17 and Stacey A. Koch, Esquire)
 18 Miami Center, Suite 2400
 19 201 South Biscayne Boulevard
 20 Miami, Florida 33131-4332
 21 for Philip Morris Incorporated.
 22
 23 JONES, DAY, REAVIS & POGUE
 24 (by Ryan E. Harden, Esquire)
 25 3500 Suntrust Plaza
 303 Peachtree Street
 Atlanta, Georgia 30308-3242

17 for R.J. Reynolds Tobacco Company.
18 By Telephone:
CARLTON FIELDS
19 (by Anna Morales, Esquire)
Bank of America Tower, Suite 4000
20 100 Southeast Second Street
Miami, Florida 33131
21 for R.J. Reynolds Tobacco Company.
22

ALSO PRESENT:

23 Beverly J. Myers-Hull, Paralegal
24 Law Offices Grossman and Roth
25

3

1	I N D E X	
2	DEPONENT:	PAGE
3	WILLIAM WAYLAND	
4	Examination by Mr. Coll	4, 87, 99
5	Examination by Mr. Yaffa	75, 96

6
7 E X H I B I T S
8 NONE
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1 P R O C E E D I N G S
2 * * *
3 WILLIAM WAYLAND, a witness called
4 for examination by counsel for the
5 Defendants, having been duly sworn,
6 testified as follows:

7 * * *
8 DIRECT EXAMINATION

9 BY MR. COLL:
10 Q. Will you please state your name and address.
11 A. William J. Wayland [DELETED]
12 [DELETED].
13 Q. My name is Norman Coll. I represent one of
14 the defendants in this case, Philip Morris.
15 I'm going to be asking you some questions
16 about Robert Allen. I'll probably be asking
17 you some questions about yourself also. Has
18 your deposition ever been taken before?
19 A. Yes.
20 Q. When and where?
21 A. Few years ago over a real estate case.
22 Q. I just need to remind you that you need to

23 answer out loud so this lady can take down
24 your testimony.
25 A. Fine.

5

1 Q. If you shake your head up and down or side
2 to side she can't interpret what you mean.
3 A. Got it.
4 Q. We need to talk one at a time because if we
5 talk at the same time she can't take both of
6 those down. This is not a marathon session.
7 If you'd like to take a break, use the
8 restroom, get up and walk around any time,
9 feel free.
10 A. Fine.
11 Q. If you answer my question, I'll assume you
12 understood it. If you don't understand my
13 question, please let me know. I'll try to
14 rephrase it so you and I can communicate.
15 I'm trying to find out the facts of this
16 case. My intention is not to trick you or
17 anything like that. Are you taking any
18 medication?
19 A. Claritin.
20 Q. For what reasons?
21 A. Sinuses.
22 Q. Is there any reason physically or mentally
23 why you wouldn't be able to give a full and
24 fair deposition today?
25 A. None.

6

1 Q. What did you do to prepare for this
2 deposition before coming here today?
3 A. Not a whole lot. I had a brief meeting with
4 these attorneys yesterday. That was really
5 it.
6 Q. When you say these folks you mean Mr. Yaffa,
7 Mr. Douglas and Miss Myers?
8 A. Yes.
9 Q. When and where did you meet with them?
10 A. In their hotel.
11 Q. What hotel was that?
12 A. I don't remember. I could probably get it
13 in my notes. The hotel they're staying at.
14 Q. When you're referring to notes, what are you
15 referring to?
16 A. Just the address of where I was to meet them
17 and where I was to meet you folks.
18 Q. Did you take notes of the meeting itself?
19 A. I did not.
20 Q. How long did the meeting last?
21 A. Approximately an hour.
22 Q. Was anyone else present at the meeting other
23 than these three people?
24 A. Bob Allen's younger brother.
25 Q. What is his name?

7

1 A. Jerry, I believe.
2 Q. What did you talk about?
3 A. Simply to give us a little preview of what
4 would happen here today.
5 Q. What kind of a preview were you given?
6 A. Really just the ground rules and very little
7 more. I can't even think of anything else.

8 Q. Did you talk about Bob Allen at all?
9 A. Oh, sure.
10 Q. What was said about Bob one way or the
11 other?
12 A. I gave them some picture of Bob as I knew
13 him in high school and the few years
14 thereafter.
15 Q. Anything else?
16 A. Not that I can recall.
17 Q. Did Jerry Allen say anything about Bob?
18 A. He did.
19 Q. What did he say?
20 A. He described Bob more as a brother would.
21 To be frank with you, I can't remember too
22 much about what he had to say.
23 Q. Did you get the impression that they were
24 close as brothers?
25 A. I did.

8

1 Q. Are they close in age?
2 A. I honestly don't know the age difference. I
3 believe Jerry is the youngest.
4 Q. What, if anything else, did Jerry say?
5 A. I didn't pay an awful lot of attention to
6 what he was saying.
7 Q. What, if anything else, did you say? What
8 did you say about what you knew about him in
9 high school?
10 A. Well, only that we were friends. Our
11 fathers are friends. We went to the same
12 high school. I transferred in when I was a
13 sophomore. He was there. Since we were
14 from the same neighborhood we were friends.
15 Q. During what period of time did you know him
16 the best?
17 A. Probably high school, high school.
18 Q. Did you ever visit him in Florida?
19 A. Yes.
20 Q. When and where was that?
21 A. I visited him probably twice that I recall
22 and once was at his photo studio that he and
23 his wife owned and another time at a local
24 restaurant in that area. Those are the only
25 two that I remember.

9

1 Q. At this meeting that you had yesterday were
2 you shown any documents or papers or
3 photographs or anything of that nature?
4 A. No.
5 Q. Did you talk about any documents or papers
6 or photographs whether or not they were
7 shown to you?
8 A. I believe someone asked me if I had read a
9 document regarding smoking. I answered I
10 had not.
11 Q. What was that document?
12 A. I honestly -- the Surgeon General's report.
13 Q. Did you have any familiarity with that
14 document?
15 A. Only what I've read in the newspaper.
16 Q. Were you shown a copy of that?
17 A. I was not.
18 Q. What date was that, do you know? The

19 Surgeon General has issued reports over a
20 period of time. Do you know which one that
21 was?
22 A. I do not.
23 Q. Was there any discussion about Edward Allen?
24 A. Yes.
25 Q. What discussion did you have about him?

10

1 A. I had really little -- personally, I had
2 nothing to say. There was a discussion
3 between Jerry Allen about his brother.
4 Q. What was that discussion?
5 A. Apparently whether he was going to be
6 deposed.
7 Q. What did you understand was going to happen?
8 A. I understand that he is resisting.
9 Q. Do you know why he is resisting?
10 A. I don't know.
11 Q. Do you know him personally?
12 A. I haven't seen him in years. I haven't seen
13 Jerry in years. I can't remember the last
14 time I saw Edward Allen.
15 Q. The Surgeon General's report you were asked
16 about, did that have to do with smoking?
17 A. Yes.
18 Q. Do you know Sylvia Allen?
19 A. Yes.
20 Q. Did you talk to her before this about the
21 lawsuit or deposition?
22 A. Yes.
23 Q. When did you do that?
24 A. Weeks ago. I couldn't say exactly but
25 probably a few weeks ago.

11

1 Q. Did you call her or did she call you?
2 A. She called me.
3 Q. What did she call you about?
4 A. She asked me to participate.
5 Q. What did she want you to do?
6 A. She wanted me to appear at a deposition and
7 I agreed to do it.
8 Q. That was a few weeks ago?
9 A. Yes.
10 Q. Up until that time did you know that she had
11 filed a lawsuit?
12 A. I did not.
13 Q. Had you talked with Bob at all about whether
14 a lawsuit would be filed?
15 A. No.
16 Q. When Sylvia called you and asked you to give
17 a deposition what did she want you to say?
18 A. She wanted me to speak about the fact that
19 Bob was a smoker in high school.
20 Q. Anything else?
21 A. That was the gist of it.
22 Q. Did you ask her any questions during that
23 conversation?
24 A. None that I can recall.
25 Q. Did you talk to your -- did you call him

12

1 Jerry?
2 A. I call him Jerry.
3 Q. It's his brother not yours.

4 A. It's Bob's brother, yes.
5 Q. Did you talk to Jerry at all before the
6 deposition other than this meeting?
7 A. I only saw him yesterday and I hadn't seen
8 him in years.
9 Q. Have you talked to anybody from these
10 attorneys' office on the telephone other
11 than at this meeting?
12 A. I talked with Beverly to set up the time and
13 place, that sort of thing.
14 Q. Just scheduling?
15 A. Yes.
16 Q. Have you talked to anybody else, your wife,
17 family members about the fact that you're
18 giving a deposition?
19 A. Certainly my wife, yes.
20 Q. What, if anything, did you say to her?
21 A. Only that I was going to be doing this.
22 Q. What is your date of birth?
23 A. September 16, 1935.
24 Q. That would make you about the same age as
25 Bob Allen, right?

13

1 A. Probably, yeah.
2 Q. Where were you born?
3 A. In Boston.
4 Q. Where did you live when you were growing up
5 say elementary school, high school?
6 A. [DELETED].
7 We moved there when I was about six years
8 old.
9 Q. How do you spell that?
10 A. [DELETED]. I got
11 married about age 30.
12 Q. Is that in Saint Ann's parish?
13 A. It is.
14 Q. Did you go to Saint Ann's Elementary?
15 A. I did.
16 Q. Were you in the same grade as Bob Allen?
17 A. Honestly, I don't remember that. I tried to
18 remember. I can't tell you whether I was or
19 not.
20 Q. What's the first recollection you have of
21 him?
22 A. High school really.
23 Q. When you went to Saint Ann's did you have
24 phys ed classes?
25 A. No.

14

1 Q. Did you play any sports at Saint Ann's?
2 A. No. I'm a terrible athlete.
3 Q. Did you have any health or hygiene classes?
4 A. None that I remember.
5 Q. Were you given any instruction at all,
6 whether it was formal or informal -- you
7 were taught by the nuns, correct?
8 A. Correct.
9 Q. Do you remember what order it was?
10 A. Sisters of Saint Joseph. I'll never forget
11 that.
12 Q. Were you given any formal or informal advice
13 about whether or not cigarette smoking was
14 hazardous?

15 A. I don't recall any discussion of cigarette
16 smoking at all in grammar school.
17 Q. Was smoking permitted on the school grounds?
18 A. I don't believe so.
19 Q. Do you know why it wasn't permitted?
20 A. I don't. Having the nuns I can guess but
21 we're not here to guess today.
22 Q. Where did you go to high school?
23 A. My freshman year was at Boston Latin School.
24 My sophomore through senior year was at
25 Christopher Columbus High School in Boston.

15

1 Q. Where is Boston Latin located?
2 A. It's Louis Pasteur Avenue.
3 Q. Is that the North End or South End?
4 A. It's over -- it's over near the hospitals,
5 Children's Hospital and so forth.
6 Q. Was Boston Latin a Catholic high school?
7 A. No, public.
8 Q. Why did you transfer then to Christopher
9 Columbus?
10 A. I didn't do well at Boston Latin School and
11 frankly, being of the age I was at I wanted
12 to be with my pals.
13 Q. Did most of your pals go to Christopher
14 Columbus?
15 A. A number.
16 Q. Who were your pals?
17 A. Bob obviously and John Bradley and a guy
18 named Jack Kerns and so on. Those were the
19 three I can remember.
20 Q. How do you spell Kerns, K-E-R-N-S?
21 A. K-E-R-N-S.
22 Q. Where is John Bradley today?
23 A. John is an attorney and has offices here in
24 Boston.
25 Q. How about Jack Kerns?

16

1 A. He's retired, I believe. I'm not sure where
2 he is.
3 Q. Was he a lawyer also?
4 A. No. I think he worked for one of the
5 utilities I believe.
6 Q. Here in Boston?
7 A. Uh-hum.
8 Q. By that time Bob Allen was a pal of yours,
9 correct?
10 A. Yes.
11 Q. When did you become friends with him if you
12 don't have a recollection of being with him
13 in elementary school?
14 A. For example, you rode city buses to high
15 school. We took the T, what's known today
16 as the T. I would see him. We would ride
17 pretty much the same subway train.
18 Q. Did you live in the same neighborhood?
19 A. Yes. We lived probably about a mile from
20 each other.
21 Q. Do you know where he lived?
22 A. [DELETED]. I don't know the
23 number.
24 Q. How about [DELETED]?
25 A. [DELETED].

1 Q. That's the same name for the same street?
2 A. One in one direction and the other.
3 Q. Did he live on a corner?
4 A. No, he did not.
5 Q. He lived on [DELETED], correct?
6 A. Yes.
7 Q. How far is that from where you were on
8 Neponset?
9 A. As the crow flies, perhaps a mile or less.
10 Q. Did you ever visit him at his house?
11 A. Yes.
12 Q. Do you have any recollection of visiting him
13 there in elementary school?
14 A. No.
15 Q. Just in high school?
16 A. Yes.
17 Q. When you transferred into Christopher
18 Columbus you would have been a sophomore?
19 A. Correct.
20 Q. Was he in the same grade?
21 A. He was.
22 Q. Are you a smoker?
23 A. No.
24 Q. Were you ever a smoker?
25 A. No. I hesitate. I borrowed my father's

1 cigarettes when I was about seven years old.
2 He didn't take kindly to that. I got
3 grounded for a week. That doesn't even
4 count I think.
5 Q. When you borrowed them did you use them?
6 A. I smoked a couple, yes.
7 Q. Did you enjoy it?
8 A. I think I enjoyed feeling grown up.
9 Q. How old were you at the time?
10 A. Seven.
11 Q. What prompted you to do that? Why did you
12 do that?
13 A. Hard to say. They were there.
14 Q. Was anyone else that you knew smoking at the
15 age of seven?
16 A. This was a very short experience. I believe
17 someone else joined me but I couldn't tell
18 you who.
19 Q. After you never smoked again, is that
20 correct?
21 A. That's correct.
22 Q. Were any of your friends smoking in
23 elementary school at Saint Ann's?
24 A. I don't think so.
25 Q. Were they smoking in high school?

1 A. Yes.
2 Q. Was Bob Allen smoking when you knew him in
3 high school?
4 A. Yes.
5 Q. How do you know that?
6 A. I saw him with cigarettes.
7 Q. Where would he smoke?
8 A. Well, in the school yard and there was also
9 a common area downstairs, kind of a
10 cafeteria area.

11 Q. Was smoking permitted in the school yard?
12 A. It must have been because I remember a
13 priest borrowing a cigarette from a student.
14 Q. Was there any age limit on who could buy
15 cigarettes in Massachusetts at that point in
16 time?
17 A. If there was I didn't know about it.
18 Q. So far as you know was Bob buying his own
19 cigarettes or was somebody buying them for
20 him?
21 A. I believe he bought his own. At least I can
22 remember one occasion certainly when I was
23 with him.
24 Q. What was that that you recall?
25 A. There's a variety store that we used to hang

20

1 around. It's gone now. It was on Neponset
2 Avenue.
3 MR. YAFFA: What is a variety
4 store?
5 THE WITNESS: What would today be a
6 convenient store.
7 Q. Like a candy store?
8 A. That type of thing but individually owned.
9 Q. Is that where he bought his cigarettes?
10 A. Yes. I recall him buying them there.
11 Q. What brand was he smoking at the time?
12 A. I believe it was Camels.
13 Q. Was smoking permitted inside the school at
14 Christopher Columbus in the cafeteria I
15 believe you said?
16 A. All I can say is that's where I remember a
17 priest approaching a student and asking for
18 a cigarette.
19 Q. In the cafeteria?
20 A. Yes.
21 Q. Did the student give the priest a cigarette?
22 A. Yes, he did.
23 Q. Did the priest light up?
24 A. He did.
25 Q. Was the student smoking at the time?

21

1 A. Well, he had cigarettes on him and the
2 priest knew it.
3 Q. Was that student or any other student
4 smoking in the cafeteria? Did you ever see
5 that?
6 A. That I can't recall for sure.
7 Q. Did Bob Allen ever tell you when he first
8 began to smoke?
9 A. He didn't.
10 Q. Do you know when he began to smoke?
11 A. I don't.
12 Q. Did his parents know he was smoking at the
13 time you knew he was smoking?
14 MR. YAFFA: Form.
15 A. I honestly don't know whether they did or
16 not.
17 Q. When you were at his house at any time
18 during the time you were in your high school
19 years did he ever smoke at home?
20 A. I don't recall him having a cigarette in the
21 house.

22 Q. Did his parents smoke?
 23 A. I'm not certain.
 24 Q. What did his father do?
 25 A. He was a truck driver, Teamster.

22

1 Q. Was his mother employed outside of the home?
 2 A. I don't think so, homemaker.
 3 Q. Who were Bob Allen's best friends in high
 4 school?
 5 A. Well, I think I was probably one of them but
 6 I don't remember really who else.
 7 Q. Was he friends with Jack Kerns or John
 8 Bradley?
 9 A. He knew them. Whether they were friends or
 10 not it's difficult to remember those days.
 11 Q. Let me ask you about yourself. Are you
 12 employed at the present time?
 13 A. I am.
 14 Q. What do you do?
 15 A. I'm a radio time salesman for a radio
 16 station.
 17 Q. How long have you done that?
 18 A. I've been an advertising salesman pretty
 19 much since I got out of college and that was
 20 probably around age 23.
 21 Q. Where did you go to college?
 22 A. BU, Boston University.
 23 Q. When did you graduate from there?
 24 A. 1959.
 25 Q. When you say you're an advertising salesman

23

1 would you represent companies?
 2 A. I work for radio stations. My first three
 3 years were selling bus advertising, transit
 4 advertising. Most of the time radio
 5 stations. I spent ten years selling cable TV
 6 advertising.
 7 Q. What type of ads did you sell?
 8 A. Every possible thing. I simply represent
 9 the radio station or the cable company. I
 10 called on clients directly or advertising
 11 agencies for whatever it might be.
 12 Q. Did you ever sell to any tobacco companies?
 13 A. I don't think so. I don't remember ever
 14 doing that.
 15 Q. Did you ever do any billboard type
 16 advertising other than the buses?
 17 A. Actually, a little bit. The company that
 18 had the transit advertising contract at the
 19 time also decided to get into some billboard
 20 advertising and so they had a limited number
 21 of billboards around the city on MBTA
 22 property.
 23 Q. So far as you know, even with billboards you
 24 didn't do any tobacco advertising?
 25 A. None. I know for billboards for certain.

24

1 Q. How about the alcohol beverage industry?
 2 A. Beer and wine. Mostly beer.
 3 Q. Any products you can remember specifically,
 4 automobiles?
 5 A. Automobiles certainly. I'm trying to think
 6 of what I'm doing today. Automobile

7 company.
8 Q. Department stores?
9 A. Department stores certainly.
10 Q. That kind of thing?
11 A. Yeah. A general number of categories. I
12 didn't specialize in anything.
13 Q. What was your degree in from BU?
14 A. I forget the exact wording but it was
15 basically broadcasting.
16 Q. Have you ever been employed as a
17 photographer?
18 A. Never.
19 Q. Have you ever engaged in photography?
20 A. I'm a pretty poor photographer.
21 Q. Just an amateur?
22 A. Pretty much.
23 Q. Point and shoot?
24 A. Exactly.
25 Q. Did you ever develop your own film?

25

1 A. Never.
2 Q. Do you know whether Bob Allen was involved
3 in photography when he was in high school?
4 A. I'm not certain. He at one point had a dark
5 room in his basement. Whether he was in
6 high school or out of high school at that
7 point I don't recall.
8 Q. Did you ever go down in the dark room?
9 A. Once.
10 Q. What did you see?
11 A. Just the -- I remember that there was a
12 light, a dark light type of thing and some
13 basic camera equipment. I can't even
14 remember exactly what he had down there.
15 Q. Was he working developing film when you went
16 down there?
17 A. Not at the time. He just showed it to me.
18 Q. What, if anything, did he do with the
19 pictures he developed?
20 A. I don't know.
21 Q. Do you know whether or not he worked at a
22 camera store or photographic studio?
23 A. I think he worked for a camera store at one
24 point.
25 Q. What was the name of that?

26

1 A. I don't know. I believe he did. I believe
2 it was on Adams Street in Dorchester and I
3 don't think it's there anymore.
4 Q. Did you ever go over there and visit him?
5 A. Not there, no.
6 Q. Did you ever visit him anywhere else when he
7 was working in a camera store?
8 A. No.
9 Q. I understand that Jerry Allen didn't go to
10 Christopher Columbus. He went to Cathedral
11 High School. That's another Catholic
12 school?
13 A. Yes.
14 Q. Is that in the South End?
15 A. Yes. Right near the Cathedral of The Holy
16 Cross. I'm not sure if it's closed or open
17 today.

18 Q. Where was Christopher Columbus, in the North
19 End?
20 A. In the North End.
21 Q. Could you go to school wherever you wanted,
22 didn't matter where you lived?
23 A. No. These were both Catholic high schools.
24 You could go to any one of your choice if
25 you could get in.

27

1 Q. Is there any reason Bob went one place and
2 Jerry went another?
3 A. Not that I would know.
4 Q. Were you in the military service?
5 A. Massachusetts National Guard.
6 Q. When was that?
7 A. From pretty much the time I got out of
8 college and then I had about six years to
9 that and so on. It was your typical
10 National Guard outfit.
11 Q. Six months?
12 A. Six months at Fort Dix and then back to your
13 unit.
14 Q. Go every summer?
15 A. Two weeks every summer.
16 Q. Was Bob Allen in the military service?
17 A. Oh, yes. He was Navy.
18 Q. When was he in the Navy?
19 A. That I'm not certain.
20 Q. Did you ever visit him in the Navy?
21 A. No.
22 Q. Do you know where he was stationed?
23 A. No.
24 Q. When you were in high school with Bob and he
25 was smoking did he tell you why he smoked?

28

1 A. No.
2 Q. Were other people your age smoking in high
3 school?
4 A. Yes.
5 Q. Can you give me an estimate. Were there a
6 lot of people smoking or a few people?
7 A. A lot.
8 Q. Do you know whether or not Bob Allen was
9 ever punished by his parents for smoking
10 when he was growing up?
11 A. I have no knowledge of that.
12 Q. In school did he smoke any other brand other
13 than Camels?
14 A. We used to -- there was always somebody had
15 cigarettes, somebody didn't. Somebody was
16 lending, someone was borrowing.
17 Technically, he probably smoked what was
18 available.
19 Q. Do you recall any brands that he smoked
20 other than Camels?
21 A. I don't.

22 MR. YAFFA: Specifically in regard
23 to the questions that are being asked tell
24 him specifically what you remember. Don't
25 guess as to whether or not he borrowed or

29

1 not unless you specifically remember him
2 borrowing.

3 THE WITNESS: Fine.
4 A. I can state that I don't remember whether he
5 borrowed or not.
6 Q. Did he ever try to get you to smoke?
7 A. No.
8 Q. How much did he smoke when you were around
9 him in high school?
10 A. I can't put a number next to it. He smoked
11 regularly.
12 Q. Was it more than a pack a week?
13 A. I really don't know.
14 Q. During that period of time did anyone tell
15 him he should quit smoking?
16 MR. YAFFA: Form.
17 A. Not that I remember.
18 Q. Did his parents smoke?
19 A. I don't recall.
20 Q. Did either of his brothers smoke, Jerry or
21 Edward?
22 A. I didn't know at that time whether they did
23 or not.
24 Q. What do you know today?
25 A. I know that Jerry stated that he started

30

1 smoking young.
2 Q. How about Edward?
3 A. I don't know anything about Edward.
4 Q. Were you friends with Edward?
5 A. No.
6 Q. What was the reason for that?
7 A. Simply an age difference.
8 Q. Did Bob Allen work anywhere else other than
9 possibly a camera store in high school?
10 A. I don't recall exactly.
11 Q. What do you recall best?
12 A. A number of young people would work at the
13 Supreme Market. I think he may have been
14 one of them. I don't remember.
15 Q. What was the Supreme Market?
16 A. It was a small chain of markets. They were
17 absorbed by a major chain.
18 Q. Grocery neighborhood chain?
19 A. Yes. For the time it was considered a
20 supermarket. It had everything available
21 there.
22 Q. What would people high school age do there,
23 bag groceries?
24 A. That's what I did.
25 Q. Could you buy cigarettes there?

31

1 A. I don't remember.
2 Q. Can you describe Bob Allen's house for me on
3 Pierce Avenue.
4 A. What the house looked like?
5 Q. Yes.
6 A. Somewhat. It was a single family home with
7 a driveway on the right. I don't recall if
8 there was a garage at the end of the
9 driveway. My memory is it was three stories
10 on a stand alone lot.
11 Q. Was it frame construction or brick or what?
12 A. Frame.
13 Q. What kind of heat did they have, do you

14 know?
15 A. They had oil heat.
16 Q. How do you know that?
17 A. My father sold them the oil burner.
18 Q. That was his business?
19 A. Yes.
20 Q. You say there were three floors. What was
21 on each floor generally?
22 A. My memory is I was never above the first
23 floor which was living room and kitchen. I
24 don't even remember if there was a dining
25 room.

32

1 Q. What kind of neighborhood was that? Was it
2 residential totally?
3 A. A residential neighborhood, sure. On that
4 particular street there was a number of
5 what's known as three deckers in Dorchester
6 and scattered single homes.
7 Q. What do you mean when you say "three
8 decker"?
9 A. Three decker is -- how do you describe a
10 three decker? It is a frame building with
11 three separate apartments in it. There must
12 be hundreds around Dorchester.
13 Q. Were there more than one unit in the Allen
14 home?
15 A. I don't remember there was. The Allen 's
16 family was a single home.
17 Q. All three floors?
18 A. Yes.
19 Q. Do you remember them ever doing any
20 remodeling or construction?
21 A. Not that I -- no, I don't.
22 Q. When your father sold them the oil furnace
23 did they install any insulation at that
24 time?
25 A. I don't know. Other than the fact my father

33

1 was in that business I knew very little of
2 the details.
3 Q. Was there any industry or factories or
4 anything nearby?
5 A. No.
6 Q. Railroad tracks?
7 A. A mile away.
8 Q. Did you notice whether or not -- did they
9 have a lawn?
10 A. I believe they had a very small lawn.
11 Q. How about a garden in the backyard?
12 A. I don't remember.
13 Q. Do you know anyone else that lived in the
14 neighborhood near the Allen's?
15 A. I can't think of any.
16 Q. Do you know where Bob Allen was stationed
17 while he was on duty in the Navy?
18 A. I don't.
19 Q. Did you ever see him when he came home on
20 leave?
21 A. I don't remember whether I did, whether he
22 was on leave or not.
23 Q. Is it best to say that you knew him best
24 during those three years you were together

25 in high school?

34

1 A. Correct.
2 Q. After that you kind of lost track of him
3 until you visited a few times in Florida?
4 A. Yes.
5 Q. Did he ever come back and visit his parents
6 after he moved to Florida?
7 A. Yes.
8 Q. Would you see him on those occasions?
9 A. I remember seeing him once.
10 Q. When was that?
11 A. I couldn't tell you the year. I do know
12 that I do remember him.
13 Q. What occurred on that occasion that you have
14 a memory of having seen him?
15 A. Only that I went over to his house and saw
16 him and it was just one meeting.
17 Q. Was he in good health at the time?
18 A. Yes.
19 Q. Was he still smoking?
20 A. I don't remember.
21 Q. Did he drink alcoholic beverages?
22 A. Well, not with me so I can't recall that.
23 Q. When you saw him on that one occasion when
24 he came back was his wife with him?
25 A. Yes.

35

1 Q. Were any of the children with him?
2 A. I don't know that they were.
3 Q. Do you know his children?
4 A. No.
5 Q. How well do you know his wife?
6 A. Well, I met her when they were dating. He's
7 my friend. She I guess would be described
8 as a friendly acquaintance.
9 Q. When and where was that?
10 A. I met her -- before they were married I met
11 her at Bob's house.
12 Q. Was that when you were in high school?
13 A. I believe it was after I was in high school.
14 Q. Was she living in Boston at the time?
15 A. No. I believe she was living in Florida.
16 Q. When and where did they meet?
17 A. I don't know.
18 Q. Was he still in the Navy?
19 A. I don't remember.
20 Q. When you first saw him and her together.
21 A. I don't remember whether he was or not. I
22 don't think he was.
23 Q. How was he dating her if she lived in
24 Florida?
25 A. That I don't know.

36

1 Q. Did you see her more than once before they
2 were married?
3 A. I only recall seeing her once.
4 Q. Do you know where she grew up?
5 A. Not for certain. I've always assumed
6 Florida but I don't know that.
7 Q. Did you ever know her to be from Boston?
8 A. No.
9 Q. Do you know what her maiden name was?

10 A. No.
11 Q. Brewster, is that name familiar to you?
12 A. No.
13 Q. While you were growing up did you have a
14 family doctor?
15 A. Yes.
16 Q. What was his or her name?
17 A. Leo Desmond.
18 Q. Was he a pediatrician?
19 A. He was a general practitioner. He delivered
20 all the kids.
21 Q. Where was his office?
22 A. They were in the Upham Corner section of
23 Dorchester. They were on Columbia Road.
24 Q. Is he still living?
25 A. He's deceased.

37

1 Q. Do you know whether or not Bob Allen used
2 him as a doctor as well?
3 A. I don't think so.
4 Q. Do you know who his doctor was?
5 A. No.
6 Q. Why don't you think he did?
7 A. There was some kind of relationship. My
8 father was friends with Leo Desmond. My
9 father grew up in that section of the city
10 where Desmond had his offices so I can't say
11 that they met there but.
12 Q. That was a different section from where you
13 lived?
14 A. Yes.
15 Q. Did you also say that your father and Bob
16 Allen's father were friends?
17 A. Yes.
18 Q. How did that happen?
19 A. They were part of a Saturday night card
20 group. They would play penny ante poker.
21 It was a moving feast. Every week it would
22 be at a different person's house every
23 Saturday. I believe -- my father was active
24 in the Knights of Columbus and I believe Jim
25 Allen was associated with the Knights of

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1 Columbus.
2 Q. That's associated with the Catholic church?
3 A. Yes.
4 Q. I assume you were raised Catholic?
5 A. Yes.
6 Q. Bob Allen was also?
7 A. Yes.
8 Q. Do you know whether or not he continued to
9 practice that faith after high school?
10 A. I believe he did.
11 Q. Was he married in the Catholic church?
12 A. I can only assume he was. I don't know. I
13 don't remember.
14 Q. Did you go to the wedding?
15 A. I don't recall going to the wedding.
16 Q. Where was he married?
17 A. That I don't know.
18 Q. What is your wife's name?
19 A. Judith.
20 Q. Do you have children?

21 A. Two boys.
22 Q. What are their names?
23 A. William and Christopher.
24 Q. How old is William?
25 A. 35.

39

1 Q. What does he do?
2 A. He is -- I forget his title. He works for
3 an advertising agency in San Francisco.
4 He's a supervisor of some sort.
5 Q. Sort of got your genes?
6 A. Yes.
7 Q. How about Christopher?
8 A. Christopher at the moment is unemployed but
9 he is on -- he expects to be employed by
10 next week.
11 Q. How old is he?
12 A. 33.
13 Q. What does he do when he is working?
14 A. He was a stock trader in Chicago.
15 Q. Does he still live in Chicago?
16 A. Just moved to [DELETED].
17 Q. Is your wife friendly with Sylvia Allen?
18 A. They're more than civil to each other.
19 They're friendly. The relationship was
20 really Bob and I.
21 Q. Do you exchange Christmas presents or things
22 like that?
23 A. No.
24 Q. When did you first learn that Bob Allen was
25 ill with cancer?

40

1 A. I can't tell you exactly when. Well, I can
2 tell you that I got a phone call from
3 Florida that he had died. I was not aware
4 that he was sick before that.
5 Q. Who called you?
6 A. I don't remember.
7 Q. Was that at or about the time of his death?
8 A. Yes.
9 Q. Did you go to the funeral?
10 A. No, I did not.
11 Q. When did Bob move to Florida?
12 A. I can't tell you. I don't know the year.
13 Q. Was it before or after he was married?
14 A. I don't remember that either.
15 Q. When he got out of the Navy was he employed
16 at all in the Boston area, and if so what
17 did he do?
18 A. The years kind of run together. I don't
19 remember whether he was or not.
20 Q. Do you know that he was employed in any
21 other capacity other than as a photographer?
22 Did he do any other type of work?
23 A. None that I remember.
24 Q. You say you visited him several times in
25 Florida?

41

1 A. Not several times. I would say -- I would
2 say twice.
3 Q. When and where was that?
4 A. I can't give you the dates. We were
5 vacationing in Florida and we went by.

6 Q. One time you visited him at the studio,
7 correct?
8 A. Yes. That's correct.
9 Q. Was that during normal working hours?
10 A. I remember it was late afternoon.
11 Q. Were both Bob and Sylvia there?
12 A. Yes.
13 Q. Did you just visit or what did you do?
14 A. My recall is we visited them at the studio
15 and I don't remember going anywhere else.
16 Q. Didn't go to dinner or anything?
17 A. I don't remember that we did at that time.
18 Q. Didn't go back to their house?
19 A. I don't think we did.
20 Q. Were they living above the studio in an
21 apartment at that time?
22 A. I think the studio that they were in at that
23 time, as I recall, was in one of these mini
24 mall block type things.
25 Q. Just a one story type thing?

42

1 A. Yes.
2 Q. Did you ever visit him at his home in
3 Florida?
4 A. Never.
5 Q. That first visit when you visited him at the
6 studio, do you remember what decade it was,
7 whether it was the 70's, 80's?
8 A. I'd have to guess and I really can't.
9 Q. When you went to vacation in Florida on that
10 occasion where did you go?
11 A. I don't remember where we were. We were
12 simply in Florida. Florida was a great
13 target in those days.
14 Q. You didn't go to a particular place like
15 Naples or Fort Lauderdale or something to
16 stay?
17 A. I couldn't tell you where we stayed.
18 Q. Were you driving?
19 A. No, flew.
20 Q. Where did you drive to?
21 A. Miami.
22 Q. Where did you stay when you were on
23 vacation?
24 A. Stayed at a hotel on the Atlantic shore very
25 near a small town. I remember driving

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1 north. There's a small town, kind of a
2 gated -- it's a town. I forget the name of
3 it. I believe we were in the City of Miami.
4 Q. You were on the beach?
5 A. Yes.
6 Q. How long did you stay on that occasion?
7 A. I think we stayed a week.
8 Q. Did you visit any other friends other than
9 Bob Allen while you were vacationing in
10 Florida?
11 A. I don't believe I had any friends down there
12 other than Bob.
13 Q. The second time you visited him where did
14 you see him that time?
15 A. We met at a private club. I think it's a
16 rather prominent name too. It's what would

17 be described as a country club. I don't
18 remember if they had a golf course or not.
19 We met in the restaurant.
20 Q. Was that in Miami Beach?
21 A. It was on that side, on the Atlantic side.
22 I forget what town. It was not too far from
23 where they lived.
24 Q. Adventur?
25 A. No.

44

1 Q. Turnberry Isle?
2 A. No.
3 Q. Indian Creek?
4 A. No.
5 Q. You met at a restaurant and had dinner?
6 A. We had a meal.
7 Q. With both Bob and Sylvia?
8 A. Bob and Sylvia.
9 Q. How did you arrange that?
10 A. Told them we were coming and they were
11 members of this club. We arranged to meet
12 there.
13 Q. Did you go back to their house afterwards?
14 A. No.
15 Q. What decade was that approximately?
16 A. It had to be in the 80's.
17 Q. When you met for the first time at the
18 studio do you recall whether Bob was
19 smoking?
20 A. I don't recall.
21 Q. Was Sylvia a smoker?
22 A. I don't know.
23 Q. When you met the second time at the private
24 club at the restaurant was Bob smoking?
25 A. I don't recall.

45

1 Q. Did he drink alcoholic beverages on that
2 occasion?
3 A. I don't recall that either.
4 Q. Did you ever know whether or not he had a
5 problem with drinking?
6 A. I am not aware of any problem.
7 Q. Did anybody ever tell you that?
8 A. Nobody.
9 Q. Did you ever see him drunk?
10 MR. YAFFA: He said he never saw
11 him drink. Object to the form.
12 Q. Did you ever see him drunk after he had
13 drunk something?
14 A. No.
15 Q. Do you know whether or not he was ever
16 hospitalized and treated for alcohol abuse?
17 A. I have no knowledge of that.
18 Q. Was anyone else present when you had dinner
19 at the restaurant other than Bob and Sylvia
20 and you and your wife?
21 A. Just the four of us.
22 Q. That was sometime in the 1980's, correct?
23 A. Yes.
24 Q. Did you see him at all after that time until
25 the time he died?

46

1 A. I don't recall seeing him after that.

2 Q. Do you know whether or not he ever smoked
3 any brand other than Camels?
4 A. I'm not aware of any other brand. I don't
5 know.
6 Q. Do you know when Bob's parents died?
7 A. His mother died very recently. His father I
8 don't remember. I know his father has been
9 dead a few years.
10 Q. Did his mother pass away after he did?
11 A. I think so.
12 Q. Did he come back for his father's funeral?
13 A. I don't remember.
14 Q. Did you go to that funeral?
15 A. I don't recall going to it.
16 Q. Is your own father still alive?
17 A. Dead.
18 Q. Do you know anything about the nature of
19 Bob's marriage to Sylvia?
20 A. Nothing.
21 Q. You don't know whether it was a good
22 marriage or strong marriage or anything like
23 that?
24 A. My sense is it was a good marriage.
25 Q. Do you know whether they ever separated or

47

1 lived apart from each other?
2 A. I have no knowledge of that.
3 Q. Did you ever meet his children?
4 A. I don't remember ever meeting his kids, no.
5 Q. Do you know how many children he has?
6 A. I think he has two.
7 Q. Did Bob ever tell you how old he was when he
8 first started smoking?
9 A. He never did.
10 Q. Did he ever tell you how old he was when his
11 parents found out he was smoking?
12 A. No.
13 Q. Did he ever say whether he liked smoking or
14 not?
15 A. I don't remember him ever saying that.
16 Q. Did you get a driver's license when you were
17 first of age to get one in Massachusetts?
18 A. No. I don't think I got it until I was
19 about 18.
20 Q. You could get one at what age?
21 A. 16.
22 Q. What was the reason for that?
23 A. I just didn't have a car.
24 Q. How about Bob? Did he have a driver's
25 license when you knew him in high school?

48

1 A. I don't remember.
2 Q. Did he have a car?
3 A. I don't think so.
4 Q. Did you go to movies when you were in high
5 school?
6 A. Yes.
7 Q. Did you ever go to any movies with Bob
8 Allen?
9 A. I don't remember if I did or didn't.
10 Q. Did they permit smoking in the movies at
11 that time?
12 A. No. Not in Massachusetts.

13 Q. Did he play any sports in high school, Bob
14 Allen?
15 A. None that I remember.
16 Q. Did he have any hobbies other than
17 photography?
18 A. I don't know. I don't remember any.
19 Q. Are you a fisherman?
20 A. No.
21 Q. Was he a fisherman?
22 A. I don't know. I don't think so.
23 Q. Did he ever smoke anything other than
24 cigarettes like a pipe or cigar?
25 A. I never saw him, no.

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1 Q. How about yourself? Did you ever smoke a
2 pipe or cigars?
3 A. I smoked cigars for a few years.
4 Q. When was that?
5 A. Mid 80's.
6 Q. How frequently would you do that?
7 A. About once or twice a day.
8 Q. When did you quit that?
9 A. Probably in the mid 80's. I couldn't tell
10 you the year. I quit.
11 Q. Why did you quit?
12 A. I wasn't -- it wasn't that much fun and I
13 got the flu. I was sick for a week. I
14 tried a cigar and I said I don't need this.
15 Q. Did you quit for health reasons?
16 A. No.
17 Q. Did you think that smoking cigars might be
18 hazardous to your health?
19 A. I did not.
20 Q. What was the reason for that?
21 A. It was simply a matter of being in the
22 broadcasting industry and some of us took up
23 smoking cigars around that time.
24 Q. When you were growing up in high school was
25 it common knowledge that smoking was not

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1 good for your health?
2 MR. YAFFA: Form.
3 A. I don't remember that it was.
4 Q. Was it common knowledge that smoking could
5 be habit producing?
6 MR. YAFFA: Form.
7 A. I don't recall.
8 Q. When did you first become aware of the fact
9 that smoking cigarettes could be hazardous
10 to your health?
11 A. Well, I couldn't give you a time frame. I
12 don't remember exactly.
13 Q. Are you aware of that now as we sit here
14 today?
15 A. Oh, I am.
16 Q. When did you first become aware of that
17 approximately?
18 A. Well, time wise I can't say. I can say that
19 at some point when there was debate going on
20 about putting labels on cigarette packs and
21 in advertising that that's when I became
22 aware.
23 Q. When you're speaking of labels you're

24 speaking of warning labels?

25 A. That's right.

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1 Q. If I told you the first warning label
2 appeared on a pack in 1966 would that be the
3 time frame?

4 A. It might. I don't recall.

5 Q. Were you involved in the advertising
6 business at that time?

7 A. Yes.

8 Q. Did your parents ever tell you that smoking
9 could be hazardous to your health?

10 A. No.

11 Q. Did your parents ever tell you not to smoke?

12 A. They never told me not to smoke.

13 Q. Did you ever read any articles in newspapers
14 or magazines that suggested that smoking
15 could be hazardous to your health?

16 A. Yes.

17 Q. Any of the Boston newspapers, were they ever
18 delivered at home when you were growing up?

19 A. Yes.

20 Q. Which ones?

21 A. The Boston Post and later The Boston Globe.

22 Q. Were any of those evening papers?

23 A. No. They were both morning papers.

24 Q. Was there a Boston newspaper delivered in
25 the afternoon or evening?

52

1 A. I believe there was but we didn't take it.

2 Q. What was the name of that?

3 A. Well, I think you could have home delivery
4 of the Boston Record and there was the
5 Boston Traveler.

6 Q. There was a lot of newspapers back in
7 Boston.

8 A. Back in the good old days, and in New York.

9 Q. Did your family subscribe to any magazines
10 at home while you were growing up?

11 A. Yes, but I don't remember what they were.

12 Q. Did you get National Geographic?

13 A. We didn't subscribe to it, no.

14 Q. How about Reader's Digest?

15 A. We read it. Whether we subscribed to it I
16 don't know. It would be in the house.

17 Q. Did you ever read any articles in Reader's
18 Digest about smoking being hazardous?

19 A. No.

20 Q. Did you Reader's Digest?

21 A. Not often.

22 Q. What kind of student were you in terms of
23 grades?

24 A. Fair, C.

25 Q. How about Bob Allen? What kind of student

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1 was he?

2 A. I don't remember.

3 Q. Do you ever remember him being disciplined
4 for getting bad grades?

5 A. No.

6 Q. Or being on the dean's list for grades?

7 A. No.

8 Q. Were you in some of the same classes

9 together?
10 A. Yes.
11 Q. Do you remember where he stood in the class
12 as opposed to you?
13 A. No, I don't.
14 Q. Did you study together?
15 A. No.
16 Q. Did you study at all?
17 A. Yeah. That's why I was a C.
18 Q. Did kids study together back then?
19 A. No.
20 Q. Was there homework?
21 A. There was homework certainly.
22 Q. You wouldn't get together at each other's
23 house?
24 A. No.
25 Q. Did you ever do that with Bob Allen?

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1 A. No.
2 Q. You did graduate?
3 A. I did.
4 Q. You got a diploma?
5 A. I did.
6 Q. He did too?
7 A. Yes.
8 Q. Same year?
9 A. I believe so, yes.
10 Q. When you were in elementary or high school
11 had you heard the terms "cancer sticks"?
12 A. I heard the term but I can't tell you
13 whether I was in school or not when I heard
14 that term.
15 Q. What did that term mean?
16 MR. YAFFA: To you?
17 Q. To you.
18 A. To me. What does it mean to me?
19 Q. Yes.
20 A. It means that you can get cancer from
21 smoking cigarettes.
22 Q. When you were in elementary school or high
23 school did you hear the term "coffin nails"?
24 A. I heard the term. I can't remember when.
25 Q. Was that used to refer to cigarettes?

55

1 A. Yes.
2 Q. How about the term "nicotine fit"?
3 A. I've heard of the term.
4 Q. Have you heard that term? Did you hear it
5 when you were in high school or elementary
6 school?
7 A. I don't remember that.
8 Q. What did that mean to you?
9 A. That cigarettes made you nervous.
10 Q. Did it also mean cigarettes could be habit
11 forming, you had to have a cigarette?
12 A. Yes.
13 Q. Did any member of your family or relative
14 ever have any disease that was associated
15 with smoking?
16 MR. YAFFA: Object to form and
17 predicate.
18 A. I can't say that anybody did.
19 Q. Did any member of your family or relative

20 ever die from any disease that was
21 associated with smoking?
22 MR. YAFFA: Same objection.
23 A. My father died of prostate cancer.
24 Q. Was it believed that that was associated
25 with smoking?

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1 A. No.
2 Q. Was your father a smoker?
3 A. Yes.
4 Q. Did you ever know of anybody who had any
5 pulmonary problems, difficulty breathing
6 that was associated with smoking?
7 A. In my family?
8 Q. Yes.
9 A. No.
10 Q. How about friends or relatives or not your
11 immediate family?
12 A. In recent years.
13 Q. Who would that be?
14 A. I have a friend named John Goodwill who
15 passed away. He had a heart attack.
16 Q. His heart problems were associated with
17 smoking?
18 A. His widow believes that.
19 Q. Anyone else that you would put in that
20 category?
21 A. A friend that I worked with for many years
22 named Carlo Lagateria passed away years ago
23 from lung cancer.
24 Q. That was associated with smoking?
25 A. Very much so, by his brother.

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1 Q. How about when you were growing up? Did you
2 know of anyone who had a disease or who died
3 from a disease that was associated with
4 smoking?
5 MR. YAFFA: Same objection.
6 A. I didn't associate in those days one with
7 the other. It didn't occur to me.
8 Q. Do you know what the 1964 Surgeon General's
9 report is?
10 A. No.
11 Q. This is what you were asked about earlier in
12 the meeting, is that correct?
13 MR. YAFFA: Form.
14 A. I was asked about -- I wasn't asked about
15 it. It was a suggestion that the Surgeon
16 General's report might be brought up.
17 Q. Had you ever heard of that before?
18 A. I'm aware that there are Surgeon General's
19 reports.
20 Q. Are you aware of what the 1964 Surgeon
21 General's report on cigarette smoking and
22 cancer found or discussed?
23 A. No, I'm not.
24 Q. Did you ever read any news articles about it
25 during that time when it came out in 1964?

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1 A. I don't remember that I read about that
2 specific thing. I read about Surgeon
3 General's reports and smoking.
4 Q. You know that Surgeon General report in 1964

5 was one of the most widely reported events
6 at that time? For someone in the broadcast
7 and advertising industry were you not aware
8 of it at all?
9 A. I probably was aware of it. I don't
10 remember that a Surgeon General report came
11 out in 1964. I guess that's what I'm trying
12 to say.
13 Q. When you knew Bob in high school was he
14 hiding his cigarettes from his parents?
15 A. I don't recall that he was. I don't know.
16 Q. When you knew him was he carrying a pack of
17 cigarettes in his shirt pocket or rolled up
18 in his sleeve?
19 A. I don't recall he ever wore them carried up
20 in his sleeve. Where he carried them I
21 don't remember.
22 Q. Did you ever know whether or not he was
23 hiding them in the garage or in a crotch of
24 a tree in the backyard?
25 A. I have no idea.

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1 Q. Do you know of any specific health problems
2 that Bob might have had or that Bob had
3 before he was diagnosed with his last
4 illness here with cancer?
5 A. I do not.
6 Q. Did he have diabetes?
7 A. If he did, I didn't know about it.
8 Q. Did he have high blood pressure?
9 A. I have no idea.
10 Q. Did he have heart disease?
11 A. I have no idea.
12 Q. Did he have any orthopedic injuries or bone
13 diseases?
14 A. I don't know that he did.
15 Q. Did he have any lung problems or pulmonary
16 problems?
17 A. I know nothing about that.
18 Q. Did he have any problems with his liver or
19 pancreas?
20 A. I have no knowledge of that.
21 Q. Any problems with his kidneys?
22 A. None that I know of.
23 Q. Did he ever have a kidney stone?
24 A. Not that I know of.
25 Q. Did he ever have tuberculosis?

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1 A. I don't think so but I don't know.
2 Q. Did you ever have diabetes?
3 A. No.
4 Q. High blood pressure?
5 A. No.
6 Q. Heart disease?
7 A. No.
8 Q. Did you ever break any bones?
9 A. Yes.
10 Q. You ever have any lung problems or pulmonary
11 problems?
12 A. Never.
13 Q. How about liver, pancreas or kidneys?
14 A. None.
15 Q. Have you had any problems with cancer?

16 A. No.
17 Q. Other than sinus problems have you had any
18 other health problems in the last five
19 years?
20 A. Occasional flu but nothing serious.
21 Q. The medication that you take for your
22 sinuses, is that over the counter or
23 prescription?
24 A. Prescription.
25 Q. Who prescribes that for you?

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1 A. My primary.
2 Q. Did you ever know Bob Allen's grandfather or
3 grandmother?
4 A. I don't recall ever meeting them, no.
5 Q. Do you know what his father died from?
6 A. Yesterday Gerard mentioned that he had
7 diabetes, I believe. Until yesterday I did
8 not know.
9 Q. Was that attributed to the cause of his
10 death by Jerry?
11 A. Jerry said that yesterday.
12 Q. When you were in high school and students
13 were smoking you said there were a good
14 number of them?
15 A. Yes.
16 Q. People your age were smoking?
17 A. Yes.
18 Q. Was that both boys and girls?
19 A. It was an all boys high school so I don't
20 remember.
21 Q. The girls that you knew at that time and
22 that age, were they smoking as well?
23 A. Some were.
24 Q. I may have asked you this. If I did, I
25 don't mean to repeat myself. Did you have a

62

1 health or hygiene courses in high school
2 where you were taught about the adverse
3 health effects of smoking cigarettes?
4 A. Did not.
5 Q. You're certain of that?
6 A. Yes.
7 Q. Did Bob Allen ever tell you that he was
8 addicted to smoking?
9 A. No.
10 Q. Did Bob Allen ever tell you that he had
11 tried to quit and was unable to quit
12 smoking?
13 A. No.
14 Q. Did Bob Allen ever tell you that he knew
15 smoking was hazardous to his health?
16 A. No.
17 Q. Did Bob Allen ever use the terms "coffin
18 nails", "cancer sticks" or "nicotine fit" to
19 you?
20 A. I don't recall that he did.
21 Q. Did Bob Allen ever tell you that he enjoyed
22 smoking cigarettes and he chose not to quit?
23 A. I don't recall him ever saying that.
24 Q. Did you ever have a discussion with Bob
25 Allen about any statements that the tobacco

63

1 companies might have made?
2 A. I don't remember.
3 Q. What is the Tobacco Industry Research
4 Committee?
5 A. I don't know.
6 Q. What is the Council for Tobacco Research?
7 A. I don't know.
8 Q. What was The Tobacco Institute?
9 A. I don't know.
10 Q. How would you describe Bob Allen's
11 personality when you knew him?
12 A. Outgoing.
13 Q. Was he calm and easy going or was he nervous
14 and tense?
15 A. Well, I wouldn't say he was nervous and
16 tense. He was animated.
17 Q. Was he an extrovert type person?
18 A. I saw him that way.
19 Q. Did he meet friends easily?
20 A. Yes.
21 Q. Was he emotional? Did he easily laugh or
22 cry?
23 A. No more than normal.
24 Q. Was he the kind of person that made up his
25 own mind?

64

1 A. That's awfully hard to say. I presume he
2 did.
3 Q. Was he a stubborn type person?
4 A. No.
5 Q. Was he strong willed?
6 A. Not in any forceful kind of way.
7 Q. Was he a methodical and follow directions
8 type person?
9 A. I didn't think so particularly.
10 Q. Was he a reasonable, logical thinker type
11 person?
12 A. Yes.
13 Q. Did he have a bad temper?
14 A. No.
15 Q. Did you ever see him get upset if he made
16 mistakes?
17 A. No.
18 Q. Was he a perfectionist about his work,
19 either his school work or photography?
20 A. No.
21 Q. Did he enjoy socializing with others or
22 prefer to stay at home?
23 A. He liked to socialize with others.
24 Q. Did he have good common sense?
25 A. I think so.

65

1 Q. Was he a careful person?
2 A. Not in the -- he was your normal kind of
3 person. He certainly would take care not to
4 burn himself or something like that. He
5 wasn't anal.
6 Q. Did he keep things to himself or did he talk
7 openly about them to others?
8 A. In my experience he would pretty much tell
9 you -- if he kept things to himself,
10 obviously I didn't know about them. He was
11 pretty easy.

12 Q. Did you ever see him when he was under any
13 kind of stress?
14 A. I don't remember seeing him that way.
15 Q. Did you ever see him when he was depressed?
16 A. No.
17 Q. Did he have any nervous habits?
18 A. Cigarettes.
19 Q. Why do you say that?
20 A. That was the only habit that I know that he
21 had.
22 Q. Did you ever see him drive an automobile?
23 A. I must have. I don't remember.
24 Q. Did he ever get any tickets for speeding or
25 anything like that?

66

1 A. None that I know of.
2 Q. Was he a generous person?
3 A. I felt he was.
4 Q. Did he give to charity or church?
5 A. I don't know.
6 Q. Did he attend church regularly?
7 A. He did when we all knew each other in high
8 school.
9 Q. That would be Saint Ann's?
10 A. Yes.
11 Q. That would be every Sunday and Holy Days and
12 holidays, things like that?
13 A. Yes.
14 Q. Did he have any hobbies other than
15 photography?
16 A. I know of none.
17 Q. Was he a fisherman?
18 MR. YAFFA: Asked and answered.
19 A. I don't know.
20 Q. Did he play tennis or golf?
21 A. Not when I knew him in school.
22 Q. The club that he belonged to in Florida, did
23 he play tennis or golf there do you know?
24 A. I don't know.
25 Q. Did he follow any college or sports teams?

67

1 A. Well, he was official photographer of the
2 Miami Dolphins at one point and the Tampa
3 Bay Buccs another period.
4 Q. How do you know that?
5 A. He told me. He was very proud of that.
6 Q. Was that when you visited him?
7 A. Yes.
8 Q. Do you know if he ever got fired from the
9 Dolphins or Buccs?
10 A. I know he parted company with the Dolphins
11 but I never knew the circumstances.
12 Q. How did you know that?
13 A. He told me.
14 Q. Was that when you visited him in Florida?
15 A. No. My memory is it was a phone
16 conversation.
17 Q. Did you talk to him on the phone often?
18 A. No.
19 Q. Would he call you or you call him?
20 A. He called me.
21 Q. What, if anything, did he say when he parted
22 company with the Dolphins?

23 A. The owner of the Dolphins --
24 Q. Do you remember his name?
25 A. I don't remember his name. I remember him

68

1 mentioning the owner of the Dolphins and I
2 guess this man is not -- my memory is there
3 was a discussion that he was not easy to get
4 along with.
5 Q. Was that Joe Robbie?
6 A. I believe it was Joe Robbie.
7 Q. Did any litigation arise out of that?
8 A. If it did, I knew nothing about that.
9 Q. Did he play any sports in high school?
10 A. I don't remember him playing any sports.
11 Q. What did he do for exercise?
12 A. I don't know.
13 Q. Was he a jogger or runner?
14 A. Not that I knew of.
15 Q. Did he have a weight problem?
16 A. No.
17 Q. Was he handy around the house? Did he do
18 those kinds of repairs?
19 A. I don't know that he was or not.
20 Q. Was he a cook?
21 A. I don't believe so.
22 Q. Other than the club in Florida did he belong
23 to any other clubs or organizations that you
24 knew of?
25 A. None that I knew of.

69

1 Q. Was he in the Knights of Columbus?
2 A. I don't think so.
3 Q. Were you?
4 A. No.
5 Q. Did you ever watch TV with him?
6 A. If I did, I don't remember.
7 Q. Do you know whether or not he ever watched
8 TV?
9 A. I'm certain he did.
10 Q. Do you know what his favorite programs were?
11 A. I don't.
12 Q. Did he watch news programs?
13 A. If he did, I don't know about it.
14 Q. Did he ever go to the race track or the dog
15 track or horse track?
16 A. I don't know that he did.
17 Q. Did you ever do that when you were in
18 Florida?
19 A. I didn't, no.
20 Q. What did he do for vacation?
21 A. I don't know.
22 Q. Did he ever take a vacation, do you know?
23 A. I don't know.
24 Q. Was he a coffee drinker?
25 A. He drank coffee.

70

1 Q. How frequently?
2 A. That I don't know.
3 Q. Was he taking any medications, to your
4 knowledge?
5 A. None that I knew of.
6 Q. Did he have any financial problems at any
7 time that you knew?

8 A. None that I knew of.
9 Q. What do you know about his business, the
10 studio in Florida?
11 A. I know it was a -- he did portraits. He did
12 weddings and your normal retail photography
13 I guess is how you'd refer to it. I don't
14 know that he was a commercial photographer.
15 I know he did his sports photography.
16 Q. Was his wife also a photographer or is she?
17 A. Yes.
18 Q. They were both involved in the business?
19 A. Yes.
20 Q. Was anyone else involved in the business?
21 A. Not when I knew him.
22 Q. Sometimes there's a person who gets the
23 business and a person who does the business.
24 Did you have any understanding of what Bob's
25 role was or Sylvia's role was in connection

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1 with the studio?
2 A. My understanding is that Bob was more the
3 photographer and Sylvia was more the book,
4 handled the books. She also did photo work
5 herself.
6 Q. How would they get their clients or
7 customers or whatever you called them?
8 A. The only time he ever mentioned anything was
9 that he was friendly with a rabbi at a local
10 temple and the rabbi referred work to him.
11 Q. Do you know the names of anybody whose
12 portraits or pictures he took?
13 A. None.
14 Q. Did he ever offer to do that for you or your
15 family?
16 A. Yes.
17 Q. Did you do it?
18 A. He did some work for me. He took my wedding
19 photographs and he did kind of an artistic
20 rendering of them.
21 Q. Where was he living at that time?
22 A. I believe he was in Florida.
23 Q. Where were you married?
24 A. I was married in Turners Falls,
25 Massachusetts.

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1 Q. He came up here to photograph the wedding?
2 A. No. Another fellow actually took the photos
3 of the wedding. We shipped him something
4 and whether it was the prints I don't
5 recall. That's what he worked from.
6 Q. Then what did he do, retouch those?
7 A. Yeah.
8 Q. Arrange those?
9 A. No. He took them and basically colored them
10 with a state of the art in 1965.
11 Q. Did he do that as a favor to you?
12 A. Yes.
13 Q. He didn't charge you?
14 A. No. It was something of a wedding gift.
15 Q. You know of anybody else that he did work
16 for?
17 A. No.
18 Q. Did he do that for his brother?

19 A. If he did, I don't know about it.
20 Q. Did he enjoy being a photographer?
21 A. I think he definitely did.
22 Q. Did he tell you that?
23 A. Oh, yes.
24 Q. Is the studio still in business?
25 A. I think it is.

73

1 MR. COLL: Let me take a break
2 here. I think I'm through.
3 (Recess.)
4 Q. When you were friends with Bob in high
5 school and when you knew that he was smoking
6 where did you see him smoking, what places?
7 For example, did you go to and from school
8 together?
9 A. Some times.
10 Q. Did you walk or take a bus?
11 A. No. We would take a bus. It was strictly a
12 matter of whether he caught the same bus I
13 did.
14 Q. Did he smoke on the bus?
15 A. I don't recall.
16 Q. Do you recall in particular any place where
17 you saw him smoking?
18 A. At school and in front of this variety
19 store.
20 Q. When you visited him at his house did he
21 smoke at his house?
22 A. I don't remember ever seeing him smoke at
23 his house.
24 Q. Do you recall if he smoked more cigarettes
25 on occasion than others?

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1 A. No.
2 Q. If he had a test coming up or something did
3 he smoke more?
4 A. No. If he did, I never noticed that.
5 Q. Did he date girls during high school?
6 A. I don't remember.
7 Q. This was an all boys school?
8 A. Yes.
9 Q. Was there an all girls school?
10 A. In the same building.
11 Q. That's where the girls came from?
12 A. That's where the girls were.
13 Q. Did you have any interaction with those
14 girls?
15 A. Not that the nuns or the priests enjoyed
16 seeing but yes. Certainly we did outside
17 school either before school or after school.
18 Q. That's where you would see the girls smoke?
19 A. I remember girls smoked. I couldn't tell
20 you who did, who didn't.
21 Q. Did you date girls during high school?
22 A. Tried to. I wasn't very successful.
23 Q. Did you ever double date with Bob during
24 high school?
25 A. I can't say for sure.

75

1 Q. Any time during the period that you knew him
2 in high school did he ever stop smoking for
3 any reason?

4 A. Not that I know of.
5 Q. Did he ever get the flu or sick?
6 A. I don't remember that there was ever a time.
7 Maybe. I don't know.
8 MR. COLL: I don't have any further
9 questions at this time.
10 MR. YAFFA: Does the young lady on
11 the phone have any questions?
12 MS. MORALES: I have no questions.
13 CROSS-EXAMINATION
14 BY MR. YAFFA:
15 Q. My name is Andy Yaffa. We met yesterday.
16 A. Correct.
17 Q. I, with the other folks on this side of the
18 table, represent the estate of Mr. Allen. I
19 have a couple follow-up questions for you.
20 If I ask you anything at any point that
21 doesn't make sense or is unclear, let me
22 know and I'm happy to rephrase. I'm going
23 to bounce around a little bit. Do you
24 understand that?
25 A. I do.

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1 Q. I'm not going to be long. I'm not going to
2 ask you about your family. I'm not going to
3 ask you about your work, your habits. I'm
4 going to ask you about Mr. Allen. You
5 understand that?
6 A. I do.
7 Q. When I say "Mr. Allen" I'm talking about Bob
8 Allen, your friend through high school.
9 A. Correct.
10 Q. Specifically in regard to Bob Allen, would
11 you describe him as being a leader or a
12 follower?
13 A. He was not a leader.
14 Q. Would you agree that Bob Allen through the
15 high school years that you knew him was one
16 who was willing to go with the flow?
17 A. Yes.
18 Q. If a lot of his friends were smoking and
19 doing things he was likely to do the same?
20 A. That is how I would understand him, yeah.
21 Q. When this deposition first started today
22 Mr. Coll asked you some initial questions
23 about what you did in preparation. Do you
24 recall that?
25 A. Yes.

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1 Q. He asked you what you did and you
2 specifically told him you hadn't done
3 anything except meet with us for about an
4 hour yesterday.
5 A. That's right.
6 Q. Prior to meeting with us yesterday has
7 anybody from any side attempted to contact
8 you and find out information that you had
9 about Mr. Allen or about his case?
10 A. No. Well, I had -- I was not home. I had a
11 visit from, I presume, attorneys for the
12 other side who came to my house unannounced
13 one afternoon. My wife happened to be home.
14 I wasn't. They asked if they could call

15 later. When I got home I called Sylvia
16 Allen and said who are these people. She
17 said they're not my people. When they did
18 phone I happened to be outside of the house
19 again. My wife simply stated that I was not
20 willing to talk to them at that time.
21 Q. Do you recall as you sit here today whether
22 or not the people who showed up at your
23 house and represented to be there on behalf
24 of big tobacco stated they were there from
25 Philip Morris or Reynolds?

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1 MR. COLL: Object to the form.
2 MS. HARDEN: Object.
3 Q. Where did they tell you they were from?
4 A. I never spoke to them.
5 Q. What did they say to your wife? Did they
6 say "We're here on behalf of the tobacco
7 companies"?
8 A. No. They did not.
9 Q. What did they say?
10 A. When I got home she said that attorneys
11 involved with this business that we're doing
12 today had visited the house. She didn't
13 know who they were which is why I placed the
14 call to Sylvia.
15 Q. Then later on that same day they called
16 back, meaning the lawyers that had showed up
17 that day unannounced?
18 A. They did.
19 Q. Your wife got on the phone and spoke with
20 them?
21 A. She answered the phone. I was outside. I
22 had told her if they call you can simply say
23 to them I'm not interested in talking to
24 them.
25 Q. I want to ask you whether or not you know as

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1 you sit here today whether somebody
2 attempted to contact Jerry Allen as well.
3 A. I believe somebody did because my memory is
4 that Jerry said he had.
5 Q. He told you this yesterday?
6 A. Yes.
7 Q. To the best of your knowledge, did Jerry
8 speak to these folks who attempted to show
9 up and elicit information unannounced?
10 A. I think he did not.
11 Q. There was some discussion regarding a phone
12 call to you from Sylvia about the fact that
13 there was a lawsuit and you were listed as a
14 witness. Do you recall that?
15 A. Yes.
16 Q. You said Sylvia asked you to comment on the
17 fact that Bob was a smoker in high school?
18 A. Right.
19 Q. Was Bob in fact a smoker in high school?
20 A. My memory is that he was.
21 Q. Your age during the high school years was
22 between grades nine through 12?
23 A. Well, actually, because I went to Latin
24 school for my freshman year it would be
25 grades ten through 12.

1 Q. The age that you had during those years
2 would be somewhere between the ages of 14
3 and 16. Is that fair to state?
4 A. Yeah. Let's move it forward. Let's say 15
5 to 17.
6 Q. To the best of your recollection you know as
7 you sit here today and you've testified
8 under oath Bob Allen was in fact a smoker at
9 that time?
10 A. Yes.
11 Q. He was smoking Camels to the best of your
12 recollection?
13 A. Yes.
14 Q. As you sit here today the only type or brand
15 of cigarettes you recall him smoking was of
16 the Camel brand, correct?
17 A. That's the only one I specifically remember,
18 yeah.
19 Q. You told us that you worked for a number of
20 years selling advertisements on behalf of
21 radio stations. Is that right?
22 A. Right, radio and cable TV and some transit
23 advertising.
24 Q. You sold the advertisements that you told us
25 about, correct?

1 A. Yes.
2 Q. Was there somebody else from the radio
3 station who was responsible for selling the
4 ad time to the tobacco industry other than
5 yourself?
6 A. Yes. Well, for most of this period of time
7 I was a local salesman representing a
8 station or cable company, that type of
9 thing. We have national reps. They're like
10 manufacturers reps. They were the ones who
11 talked to the tobacco companies.
12 Q. Mr. Coll spent some time asking you about
13 the other types of businesses that
14 advertised on the radio station. I don't
15 want to infer that the tobacco companies
16 were not advertising on your station.
17 A. I can't recall that they were. I never
18 handled personally any tobacco advertising.
19 Q. The tobacco advertising that was being done
20 at that time was being handled by another
21 national salesman as you just described?
22 A. Correct.
23 Q. You were asked specific questions about The
24 Tobacco Institute. Do you recall that?
25 A. Yes.

1 Q. You were also asked about the Tobacco
2 Industry Research Committee?
3 A. Yes.
4 Q. He asked you do you know what it was?
5 A. That's right.
6 Q. Do you recall?
7 A. I recall being asked that question.
8 Q. Do you in fact know what The Tobacco
9 Institute or the Tobacco Industry Research
10 Committee is?

11 A. I do not.
12 Q. Did you know that The Tobacco Institute was
13 formed by all the tobacco manufacturers to
14 disseminate information about tobacco and
15 its effect on health?
16 MR. COLL: Object to the form.
17 A. I didn't know that.
18 Q. Did you know that the Tobacco Industry
19 Research Committee published a low price 48
20 page book entitled "You Don't Have To Give
21 Up Smoking"?
22 A. No.
23 Q. Did you know that the Tobacco Industry
24 Research Committee published a book titled
25 "Smoke Without Fear"?

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1 A. No.
2 Q. Did you know that the law firm which these
3 folks who spent considerable time today
4 asking you questions known as Shook, Hardy &
5 Bacon, do you know that they've been
6 involved with The Tobacco Institute for a
7 number of years?
8 A. I know nothing about this firm.
9 Q. Do you know this firm was involved in
10 directing the type of research projects
11 undertaken by the Institute?
12 A. No.
13 Q. Did you know they were heavily involved in
14 dictating the type of information that was
15 disseminated to the public by The Tobacco
16 Institute?
17 A. I don't know anything.
18 Q. Nothing at all?
19 A. Nothing.
20 Q. You never heard the name Shook, Hardy &
21 Bacon before their involvement in this case?
22 A. Not that I'm aware of.
23 Q. Mr. Coll spent some time asking you whether
24 or not you knew anybody in your family who
25 was effected by diseases associated with

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1 smoking. Do you recall that?
2 A. Uh-hum. Yes.
3 Q. I want to ask you as you sit here today do
4 you know that smoking has been known and
5 reported to be associated with stroke.
6 A. I know that, yes.
7 Q. Did you know that back in high school?
8 A. No.
9 Q. Did you know that smoking today has been
10 known and reported to be associated with
11 emphysema?
12 A. Yes.
13 Q. Did you know that back in high school?
14 A. I did not.
15 Q. Did you know that smoking has been reported
16 to be associated with pulmonary problems?
17 A. Yes.
18 Q. You know that today?
19 A. Today.
20 Q. Did you know that back in high school?
21 A. No.

22 Q. What about coronary artery disease and heart
23 disease?
24 A. Same.
25 Q. Know it today?

85

1 A. Know it today.
2 Q. Didn't know it back in high school?
3 A. Correct.
4 Q. What about the dozens and dozens of types of
5 cancer that smoking is known to be related
6 to today?
7 A. Know today, did not know in my high school
8 years.
9 Q. Smoking today has been reported to be
10 directly related to wound healing problems.
11 A. No.
12 Q. If you didn't know it today I imagine you
13 certainly didn't know it back in high
14 school.
15 A. I wasn't aware of that.
16 Q. Increased blood pressure.
17 A. Yes.
18 Q. Did you know it today?
19 A. Know it today, not then.
20 Q. He also spent some time asking you questions
21 in the negative about conversations you may
22 have had with Bob Allen prior to his death.
23 He specifically asked you about addiction
24 and attempts to quit and whether or not he
25 was unable to stop. Do you recall those

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1 questions?
2 A. Yes.
3 Q. I want to specifically ask you whether or
4 not you ever discussed these issues with Bob
5 in any way, shape or form.
6 A. Never, that I recall.
7 Q. You never discussed addiction, correct?
8 A. No.
9 Q. You don't know whether or not he was
10 addicted or not?
11 A. Do not.
12 Q. Same question in regard to his desire to
13 quit and him being unable. Did you ever
14 talk to him about the subject?
15 A. No.
16 Q. You don't know what his wants and desires
17 were at the time?
18 A. Didn't.
19 Q. You don't know whether or not he was able to
20 quit even if he wanted to?
21 A. I do not.
22 Q. You certainly don't know about the attempts
23 he undertook?
24 A. I never knew whether he did or did not.
25 Q. Did Sylvia ever tell you he attempted to

87

1 cold turkey?
2 A. No.
3 Q. Did she ever tell you that he attempted the
4 Nicorette gum?
5 A. No.
6 Q. Speaking of Nicorette, I imagine you're

7 familiar with the patches?
8 A. Yes.
9 Q. Do you know if he tried those?
10 A. I don't know.
11 Q. Do you have any knowledge as you sit here
12 today about efforts the tobacco industry
13 undertook to quash the efforts by the drug
14 companies to market and advertise the
15 Nicorette gum and the tobacco or nicotine
16 patches in an effort for those who wanted to
17 stop smoking?
18 A. I'm not aware of any of that.
19 MR. YAFFA: On behalf of Bob and
20 his family, thank you.
21 MR. COLL: I have a few follow-up
22 questions.

23 REDIRECT EXAMINATION

24 BY MR. COLL:
25 Q. The question about whether Bob was a leader
1 or a follower that Mr. Yaffa just asked you,
2 is that something you discussed in your prep
3 session yesterday?
4 A. There was some discussion I think, yes.
5 Q. You were told you'd be asked that question,
6 right?
7 A. My memory is that line of questioning might
8 come along, yes.
9 Q. If I didn't ask you that, they were going to
10 ask you that, right?
11 A. I didn't know whether anybody was going to
12 ask me that.
13 Q. Were you told what the answer should be?
14 A. No.
15 Q. What is your basis for stating that Bob was
16 not a leader?
17 A. Well, he was not -- my memory is he was not
18 involved in organizing any kind of student
19 activities or that sort of thing. He was
20 kind of a go along guy.
21 Q. By that you mean he never became student
22 body president?
23 A. No.
24 Q. He didn't organize or run any meetings?
25 A. I don't recall that he ever did.

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1 Q. By that do you mean that he was a follower
2 just like a sheep? He would just do
3 whatever everybody else was doing?
4 A. I don't want to use the word sheep. He was
5 a go along guy. Sheep would go over the
6 side of a mountain if somebody leads them
7 there. Bob wouldn't do that.
8 Q. That's what I'm saying. Just because
9 everybody else was diving into an empty
10 swimming pool doesn't mean Bob would do
11 that, right?
12 A. No.
13 Q. He was the kind of person that would
14 evaluate something and make up his own mind
15 about whether to do it or not. Isn't that
16 what you told me?
17 A. I can't say for Bob's mind. I do know that

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18 he was an average guy who would go along in
19 most activities.
20 Q. So far as you know, he chose to smoke,
21 correct?
22 A. He smoked.
23 Q. He chose to smoke?
24 MR. YAFFA: Form.
25 A. He smoked. I suppose you'd have to make the

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1 logical conclusion that he did.
2 Q. You are aware that you had been listed as a
3 witness who had some knowledge of some facts
4 relevant to this case, correct?
5 A. Right.
6 Q. In other words, we got your name from the
7 plaintiff's attorneys?
8 A. I presume you didn't pick it out of a hat,
9 yes.
10 Q. Are you aware of the fact that an attorney
11 like myself representing the defendant in
12 this lawsuit has an obligation to interview
13 all witnesses who may have knowledge of the
14 facts of the case?
15 A. Sure.
16 Q. There's nothing improper about someone from
17 my firm coming out to your home and
18 attempting to talk to you about what you
19 know about this case, is there?
20 A. No. I thought it was highly unusual.
21 Q. Why is that?
22 A. It's the first time in my entire life that
23 an attorney has knocked at my door without a
24 prior phone call or any other way -- it's
25 not as though I live across the street here.

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1 [DELETED]. I was
2 very surprised to see this.
3 Q. You understand that's the address we had for
4 you?
5 A. That's quite correct.
6 Q. You're upset if at all --
7 A. I'm not upset.
8 Q. Because nobody called you first?
9 A. I'm not upset. I thought it was highly
10 unusual.
11 Q. I want you to understand there's nothing
12 improper about it.
13 A. We didn't call the cops.
14 Q. When you spoke to Sylvia did she tell you
15 not to talk to us?
16 A. She told me that "Those aren't my
17 attorneys."
18 Q. Did she say don't talk to the attorneys for
19 the other side?
20 A. I honestly don't remember whether she said
21 don't talk to them. I made up my mind that
22 I wanted to wait until we were in this kind
23 of a setting.
24 Q. What was the reason for that?
25 A. I thought it would be better to have both

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1 sides, all sides.
2 Q. In a deposition?

3 A. Exactly.
4 Q. You made up your mind to do that on your own
5 without anybody suggesting that to you?
6 A. Oh, yeah, absolutely. Had I not talked to
7 Sylvia I would have made the same decision.
8 Q. Do you know whether or not any attempt was
9 made to talk Jerry same way an attempt was
10 made to talk to you?
11 A. Jerry said that yesterday when we were all
12 sitting together.
13 Q. Do you know whether or not the attempt was
14 made to talk to Edward and not Jerry?
15 A. I don't know.
16 Q. Jerry told you an attempt was made to talk
17 --
18 A. He told the room.
19 Q. When did you graduate from high school?
20 A. May of 1953 I think it was.
21 Q. You were 17 going on 19 at the time,
22 correct?
23 A. Yes.
24 Q. You were in high school with Bob from tenth
25 through 12th grade?

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1 A. Yes.
2 Q. You were 15 going on 16 and 17 going on 18?
3 A. Yes. We could check the numbers but
4 approximately.
5 Q. During that period of time do you know what
6 laws were in effect, if any, in
7 Massachusetts with respect to how old you
8 had to be before you could buy cigarettes?
9 A. No. I don't know.
10 Q. Do you know whether or not it was 18?
11 A. I don't.
12 Q. Do you know whether or not students in
13 tenth, 11th or 12th grade could readily buy
14 cigarettes at the variety store or candy
15 store?
16 A. Yes.
17 Q. With no problem?
18 A. Right.
19 Q. With respect to tobacco advertising on radio
20 or TV or cable, are you aware of any
21 legislation that prevents tobacco
22 advertising on radio or TV or cable?
23 A. My understanding is -- well, I don't know
24 about cable. My understanding is that the
25 FCC -- I'm not sure which federal agency.

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1 There is a ban on tobacco advertising on
2 radio and TV.
3 Q. When did that go into effect?
4 A. I could only guess. I'd have to guess. I
5 moved into big time, major station in 1966.
6 My memory is that we were not accepting
7 tobacco advertising at that time.
8 Q. As far as you know, any radio station or TV
9 station that you worked for never had any
10 tobacco advertising because the law did not
11 permit it?
12 A. No. It was gone by that time.
13 Q. You had no national representative that was

14 dealing with tobacco companies?
15 A. Well, when tobacco advertising was --
16 Q. Prohibited.
17 A. When it was okay it all came out of major
18 advertising agencies like the William S.D.
19 Agency, for example, in New York. A local
20 salesman would probably not -- it is highly
21 unlikely the local salesman would go there.
22 A national salesman either might accompany a
23 rep and they were like manufacturers reps.
24 They worked for several stations.
25 Q. You don't know anyone did that because

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1 during your time there was no --
2 A. I knew a fellow who did. I was in the
3 mailroom. I came out of high school and
4 went into the mailroom at a radio station.
5 A fellow I knew moved to New York to work
6 for CBS. We were owned by CBS. He called
7 -- that's why I remember the William S.D.
8 Agency. He called on S.D.
9 Q. That was prior to 1966?
10 A. Yes. I was still a kid in the mailroom in
11 those days.
12 Q. You say that you know today but you didn't
13 know in high school that smoking is
14 associated with a list of diseases here,
15 some of which were specific and some of
16 which were generalized as dozens of cancers
17 if I'm recalling correctly. When did you
18 first learn that smoking was associated with
19 those particular diseases?
20 A. You know how something comes on gradually?
21 I don't remember. This was no date when I
22 realized this.
23 Q. I'm not asking when. I'm asking how you
24 became aware.

25 MR. YAFFA: I think you did ask

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1 when.
2 A. The question is how. I would say reading
3 and hearing. In other words, in the media.
4 Q. In the news media?
5 A. In the media, yeah.
6 Q. Was that in the last five years or ten
7 years, 20 years?
8 A. Goes back several years.
9 Q. Only several years?
10 A. I can't give you a time.
11 Q. If I told you the warning labels have been
12 on the pack since 1966 --
13 A. You did.
14 Q. -- did you learn about it at that time?
15 A. I must have been aware of it at that time.

16 MR. COLL: I don't have any further
17 questions.

18 MR. YAFFA: A couple of follow-up.

19 RE CROSS EXAMINATION

20 BY MR. YAFFA:

21 Q. In regard to the advertising on the radio
22 station that we talked about, did you know
23 or do you know as you sit here today that
24 the actual ban on cigarette companies

25 ability to advertise on radio and TV came

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1 out in 1971?

2 A. I didn't know that.

3 Q. Is it your understanding that the tobacco
4 companies continued to advertise on the
5 radio up to the time that the ban went into
6 effect regardless of the year?

7 A. My sense was that they did, yeah.

8 Q. You went to work for the radio company in
9 196 --

10 A. I started selling about -- 1966 I went to
11 WRKO. It was considered a major Boston
12 station. Until that time I worked for small
13 suburban stations.

14 Q. You recall having someone else, a friend in
15 the industry who was actually calling on an
16 ad agency that handled the tobacco account?

17 A. Yes.

18 Q. There was some tobacco advertising going on
19 when you were in the industry up until the
20 time the ban went into effect?

21 A. Sure.

22 Q. There was a discussion regarding when Bob
23 started smoking. You said he was smoking
24 when you guys were in high school. They
25 talked about those years. To the best of

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1 your knowledge had Bob already been smoking
2 prior to high school?

3 A. I honestly can't tell you when he started.
4 I don't remember. I remember him being a
5 smoker in high school. I don't remember
6 whether or not he was a smoker prior to
7 that.

8 Q. There was then a discussion regarding
9 whether or not Bob chose to smoke. You
10 recall that discussion?

11 A. Right.

12 Q. I want to ask you the question. Did Bob
13 choose to continue to smoke or was he
14 addicted and unable to stop?

15 A. I don't know. He smoked. We never had a
16 discussion. He never said to me "I want to
17 stop." There was never that kind of
18 conversation.

19 Q. Was there ever a discussion on the topic at
20 all?

21 A. None.

22 Q. Why he started? How he started? Did he
23 want to continue? Was he unable to stop?
24 Was is a habit?

25 A. Not --

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1 MR. COLL: Object to the form.

2 A. None of those with me.

3 Q. None of these topics were ever discussed in
4 any way, shape or form, correct?

5 A. Not that I remember.

6 MR. YAFFA: Thanks again.

7 REDIRECT EXAMINATION

8 BY MR. COLL:

9 Q. Have you had any discussions about whether

10 you will testify at the trial which is
11 scheduled in February?
12 A. No. I am not.
13 Q. Have you got any plans to be out of the
14 country or unavailable in February of 2003?
15 A. No. I have no plans for February of 2003
16 unless you want me to put something in my
17 calendar today.
18 MR. COLL: Thank you. You have the
19 right to read this after she types it up.
20 You can make any changes in form or
21 substance including whether or not she's
22 taking it down correctly. You can actually
23 even change your answers if you say that's
24 wrong. You just have to say why. Do you
25 want to do that or do you want to just have

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1 it typed up?
2 THE WITNESS: I don't think we have
3 anything to go back over.
4 (Whereupon, the deposition was
5 concluded at 4:38 p.m.)
6
7

8 WILLIAM WAYLAND
9 Subscribed and sworn to before me
10 this ____ day of _____, 2002.
11
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13 NOTARY PUBLIC
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1 COMMONWEALTH OF MASSACHUSETTS
2 MIDDLESEX, ss.
3

4 I, Kristin O'Brien, a Certified Shorthand
5 Reporter and Notary Public duly commissioned
6 and qualified within and for the
7 Commonwealth of Massachusetts, do hereby
8 certify:

9 That WILLIAM WAYLAND, the witness whose
10 deposition is hereinbefore set forth, was
11 duly sworn by me, and that such deposition
12 is a true record of the testimony given by
13 the witness to the best of my skill,
14 knowledge, and ability.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand and my affixed notarial seal this 27th
17 day of AUGUST 2002.
18
19

20 Kristin O'Brien

21 Notary Public
22
23 My Commission expires:
24 November 29, 2007
25